74-844

No. [redacted]

In the

Supreme Court of the United States

OCTOBER TERM, 1974

MARGUERITE L. ORAM,

Petitioner,

v.

GENERAL AMERICAN OIL CO. OF TEXAS, *et al.*,

Respondents.

BRIEF IN OPPOSITION FOR RESPONDENTS GENERAL AMERICAN OIL COMPANY OF TEXAS, MEADOWS BUILDING CORPORATION, F. H. CONNALLY, W. H. SPARKS AND J. K. RIGSBEE, TRUSTEES OF GENERAL AMERICAN OIL COMPANY OF TEXAS EMPLOYEES' RETIREMENT PLAN, PRUDENTIAL INSURANCE COMPANY OF AMERICA AND A. H. MEADOWS

STATEMENT

The "Statement of the Case" in the Petition recites many facts which are incorrect and without foundation in the record, or which are utterly irrelevant to the issues presented to this Court and to the state courts below. These factual allegations need not be belabored here, however, for the facts of this case are set out fully and completely in the affidavits on file herein by Petitioner and Respondents.

REASONS FOR DENYING THE WRIT

This case presents nothing worthy of review by this Court. It consists only of the claims of Petitioner that she is entitled to rescind a lease agreement, when she has accepted and retained the rental payments from said lease for a period of more than twenty years. Clearly the assertions of the Petition have no consequence beyond the particular facts and the immediate parties to this litigation.

In March, 1952, while Petitioner was under a legal disability by virtue of mental incompetency, her duly appointed guardian (one of the Respondents), negotiated a lease of certain premises owned by Petitioner in Dallas County, Texas. Under said agreement, Respondent General American Oil Company was to be lessee with an option to purchase. This proposed lease was presented to the probate court, and that court authorized the guardian to execute the lease on behalf of the Petitioner. Thereafter, Petitioner's disability was removed and she was given a written final accounting by her former guardian, showing the land in question subject to the lease in question. This accounting also showed receipt by the guardian of rentals paid by Respondent General American Oil Company, which funds were accounted for and delivered to Petitioner. Since that time, Petitioner has accepted rental payments each and every month in the amount of $1,250.00. She has assigned parts or all of this income to various attorneys and creditors, and otherwise treated it entirely as her own. Prior to filing this lawsuit, she further recognized the lease in question in a letter to this Respondent requesting that "rental checks" be made directly to her.

Based on these uncontroverted facts, the trial court entered summary judgment for Respondents herein. The Court of Civil Appeals for the Eleventh Judicial District of Texas, in Eastland, Texas, affirmed the trial court, basing its decision on Plaintiff's failure to file her cause of action within four years after it had accrued. *Oram v. General American Oil Co. of Texas, et al.*, 503 S.W. 2d 607 (Tex. Civ. App.—Eastland 1974, *affirmed* 513 S.W. 2d 533). The Supreme Court of Texas rejected the reasoning of the Court of Civil Appeals, but affirmed the decision on the grounds that by her activities subsequent to the removal of her disabilities, and in accepting the rental payments, she had demonstrated full awareness of the terms of the lease and had ratified and affirmed the lease as her own act. *Oram v. General American Oil Company of Texas, et al.*, 513 S.W. 2d 533 (Tex. 1974).

There is nothing novel or momentous about this holding of the Texas Supreme Court. It merely applied the common law of contracts which was manifestly clear, and in doing so followed the law of the State of Texas. This law is not in conflict with decisions of this Court or with decisions of any other federal court, as far as Respondents can determine. Certainly, this holding does not involve any unsettled or novel question or any critical issue of federal law which would warrant review by this Court.

QUESTIONS PRESENTED

Petitioner has set out in the Petition four "questions presented". Essentially, these can be condensed into two questions of law for consideration by this Court. These are the following:

1. Do the Texas Rules of Civil Procedure which allow for (a) summary judgment proceedings, and (b) rulings on

motions for rehearing in the Texas Supreme Court without oral argument, violate the standards of due process set out by the U. S. Constitution, Amendments V and XIV?

2. Can a lease procured by fraud during Petitioner's legal disability for incompetence be ratified by Petitioner after removal of the legal disability?

OBJECTIONS TO JURISDICTION

A. The Constitutional Issues Were Not Preserved On Appeal

Although Petitioner asserts on page 13 of the Petition that the constitutional questions of due process and equal protection of the law were included in pleadings and reply briefs, only the pleadings and briefs at the trial court level included references to these provisions. However, they were not seriously argued and were quite properly treated by the trial court as insubstantial and irrelevant to the true questions at hand, to-wit, the statutes and common law of the State of Texas.

Regardless of the trial court's treatment of the alleged constitutional issues, the record will show that such issues were not presented to the appellate courts of Texas. Because Petitioner has requested that her briefs in the various courts be included in the record on appeal herein, they are available for consideration by this Court in determining whether Petitioner's constitutional issues were properly preserved. The brief prepared by Petitioner in the Court of Civil Appeals for the Eleventh Supreme Judicial District has no

points whatsoever alleging that the adverse summary judgment constituted a denial of due process or equal protection. There is no mention of either the Fifth or Fourteenth Amendments or any other constitutional provision anywhere in said brief. The Motion for Rehearing presented to that court is also devoid of any constitutional grounds of appeal.

Petitioner's Application for Writ of Error in the Texas Supreme Court likewise contains no mention of denial of any constitutionally protected right. There is no reference in such application to either the Fifth or Fourteenth Amendments, and no claim of error in the trial court based on activities or rulings of the trial court in contravention of any constitutionally protected right. The supplemental brief filed in the Supreme Court dealt with the statute of limitations issue only, and was not concerned with due process or equal protection. Petitioner's Motion for Rehearing in the Texas Supreme Court complained only of that Court's ruling with regard to Petitioner's ratification of the lease agreement in question.

The result is that the only constitutional issue before this Court is the question presented by Petitioner with regard to denial of Petitioner's request for oral argument on Petitioner's Motion for Rehearing in the Texas Supreme Court. The constitutional issue, if any, is whether the action of the Texas Supreme Court in granting Respondent's Motion for Rehearing and denying the Application for Writ of Error, no reversible error, without allowing Petitioner opportunity to argue the Motion orally, constitutes denial

of due process or equal protection. Certainly Petitioner has not presented any authorities in support of this novel constitutional question. Such cannot be seriously urged as presenting a substantial federal question for this Court's determination.

Title 28, U.S.C.A., Supreme Court Rules, Rule 19, sets out the character of reasons which will be considered by this Court with regard to issuance of writs of certiorari to state courts. Neither of the elements in subsection 1(a) of Rule 19 is even remotely presented by the Petitioner herein. Certainly none of the state courts considered the constitutional allegations presented by Petitioner to present a "substantial federal question" for determination by such courts. The points not before them on appeal, they were not even given the opportunity to do so. Even if the point were preserved, Petitioner cannot seriously contend that Rule 166a, Texas Rules of Civil Procedure (1973), providing for summary judgments, is in violation of the due process and equal protection clauses of the U. S. Constitution.

Petitioner certainly has not pointed out any applicable decisions of this Honorable Court which would suggest such result, nor any other decision of this Court which would suggest that a substantial federal question is involved. No "special or important reasons" for invoking the jurisdiction of this Court, as presented in *Fay v. Noia*, 372 U.S. 391, 83 Sup. Ct. 822, 9 L. Ed. 2d 837 (1963), or *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 75 Sup. Ct. 614, 99 L. Ed. 897 (1955), have been shown.

B. The Common Law Question

The various other questions presented by Petitioner have no relation whatsoever to federal law. Petitioner contends there is a fact question with regard to the fraud in the procurement of this contract. Obviously, a defense based on ratification by Petitioner assumes fraud in the procurement of the contract. This and the other questions raised are without doubt points of law for consideration and determination under the common law and not remotely related to any substantial federal question under the Fifth or Fourteenth Amendment, or any other Constitutional provision. This Court does not sit to review decisions of the highest court of a state to determine whether it followed the appropriate common law authorities.

Clearly the only question presented by this case of any substance whatsoever is whether Petitioner ratified the lease option contract, which certainly is not a "substantial federal question" invoking the jurisdiction of this Court. It is clear that the Petition contains no authorities from this or any other court in support of its contention that substantial federal questions were raised.

This Petition, therefore, is baseless. It presents only a private dispute, a long-standing one, but one which was fully and finally resolved by the courts of the State of Texas in accordance with long-established and fair judicial procedure. No amount of verbiage or unfounded assertions of fact, or invocations of constitutional language can convert such case into one which warrants review by this Court.

CONCLUSION

For these reasons, as well as those detailed in the opinion of the Supreme Court of the State of Texas below, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that three copies of this Brief in Opposition for Respondents General American Oil Company of Texas, Meadows Building Corporation, F. H. Connally, W. H. Sparks and J. K. Rigsbee, Trustees of General American Oil Company of Texas Employees' Retirement Plan, Prudential Insurance Company of America and A. M. Meadows were, on this 27 day of January, 1975, served by United States postage prepaid, upon each of the following: Mr. Earl J. Wentworth, 126 Main Plaza, San Antonio, Texas 78205; Mr. Jerry Bolin, 1028 North McDonald, McKinney, Texas 75069; Mr. H. Louis Nichols, Saner, Jack, Sallinger & Nichols, 1200 Republic National Bank Building, Dallas, Texas 75201; Mr. Lawrence W. Vance, 1020 Fidelity Union Tower, Dallas, Texas 75201; and Mr. James R. Kinzer, P. O. Box 900, Dallas, Texas.

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